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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219221

**DATE:** September 6, 1985

**MATTER OF:** Carol A. Barraza

**DIGEST:**

Employee whose promotion was delayed for 4 weeks because paperwork was misplaced may not be given a retroactive promotion and backpay since the error occurred prior to approval of the promotion by a properly authorized official. Cases allowing payments to de facto employees are not applicable since an individual properly appointed as an officer or employee of the Government is only entitled to the salary of his appointed position.

A civilian employee of the Air Force claims a retroactive promotion and backpay for the 4-week period prior to the effective date of her promotion during which she performed the duties of her new position.<sup>1/</sup> Her claim may not be paid since there is no authority to effect a promotion retroactively or award backpay where the processing of a promotion is delayed by events prior to approval of the promotion by the properly authorized official. Cases dealing with compensation of de facto employees do not provide authority to pay additional amounts to current employees.

**BACKGROUND**

Ms. Carol A. Barraza, a Military Pay Examiner, GS-6, step 2, at Lowry Air Force Base, was selected for promotion to the position of Claims Examiner, GS-7, step 1. Ms. Barraza began working in her new position on September 18, 1983. However, because her promotion papers were misplaced, the Civilian Personnel Office did not act on her promotion until October 19, 1983, and it was not effected until four weeks after she had begun work in her new position.

<sup>1/</sup> Ms. Carol A. Barraza, by letter of May 30, 1985, appeals the action of Claims Group, GGD, in Settlement Certificate No. Z-2854649, issued April 18, 1985, which denied her claim for a retroactive promotion.

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Ms. Barraza's claim for a retroactive promotion and backpay was denied by our Claims Group on the basis that there is no authority under the Back Pay Act, 5 U.S.C. § 5596 (1982), to award backpay in these circumstances. In her appeal Ms. Barraza cites our holding in 55 Comp. Gen. 109 (1975) as authority for payment of her claim.

#### ANALYSIS

Backpay may be awarded under the authority of 5 U.S.C. § 5596 (1982) as a remedy for wrongful reduction in grade, removals and suspensions, and other unjustified or unwarranted actions affecting pay or allowances. A prerequisite for the award of backpay is a determination by an appropriate authority that an employee has undergone an unjustified or unwarranted personnel action. We have recognized as unjustified and unwarranted actions clerical or administrative errors that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulations, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. Ruth Wilson, 55 Comp. Gen. 836 (1976). For purposes of the Back Pay Act, a nondiscretionary provision is any provision of law, Executive order, regulation, personnel policy issued by an agency, or collective bargaining agreement that requires an agency to take a prescribed action under stated conditions or criteria. John Cahill, 58 Comp. Gen. 59 (1978).

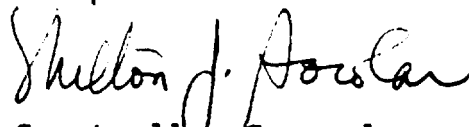
Generally, retroactive promotions may not be awarded solely on the basis of administrative delays in the processing of personnel actions. Clem H. Gifford, B-193834, June 13, 1979. With respect to delays or omissions in the processing of promotion requests that will be regarded as administrative or clerical errors that will support retroactive promotion, applicable decisions have drawn a distinction between those errors that occur prior to approval of the promotion by the properly authorized official, and those that occur after such approval but before the acts necessary to effect promotions have been fully carried out. The rationale for drawing this distinction is that the individual with authority to approve promotion requests also has the authority not to approve any such request unless his exercise of disapproval authority is otherwise constrained by statute, administrative policy, or regulation. Thus, where the delay or omission occurs before

that official has had the opportunity to exercise his discretion with respect to approval or disapproval, administrative intent to promote at any particular time cannot be established other than by after-the-fact statements as to what that official states would have been his determination. Douglas C. Butler, 58 Comp. Gen. 51 (1978); James A. Zamora, B-203615, February 26, 1982; and Jeffrey K. Bishop and Peter S. Szilassy, B-206181, May 5, 1982.

In the instant case it appears that Ms. Barraza's promotion was misplaced prior to its approval by the properly authorized official. Therefore, under the decisions cited above Ms. Barraza is not entitled to a retroactive promotion due to the error which occurred.

Ms. Barraza has also contended that she should be allowed payment for the services she rendered under the rule stated in 55 Comp. Gen. 109 (1975) in which an individual was paid for the reasonable value of his services based on a determination that his status was that of a de facto employee. At the time his services were rendered, the individual did not hold a valid appointment to any Federal position. Decisions dealing with remuneration for de facto employment are not applicable to an employee who has been properly appointed as an officer or employee of the Government. An employee of the Government is entitled only to the salary of his appointed position and, as indicated in the decisions cited, a promotion action may be made retroactively effective only in limited circumstances.

Accordingly, the action of our Claims Group in disallowing Ms. Barraza's claim for a retroactive promotion and backpay is sustained.

*for*   
Comptroller General  
of the United States